S.B.CRIMINAL MISC. II BAIL APPLICATION NO. 8003/2007

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Hoshiyar Singh vs. The State of Rajasthan

: :

Date of Order:28.11.2007

HON'BLE MR. JUSTICE RAGHUVENDRA S. RATHORE

Mr. V.R. Bajwa, for the petitioner.
Mr. Ashwani Sharma, Public Prosecutor.
Mr. S.K. Gupta, for the complainant.

Heard learned counsel for the petitioner, learned Public Prosecutor for State and learned counsel for the complainant and also perused the material on record.

2. This second bail application has been submitted by the petitioner after filing of challan on 03.11.2007. The earlier bail application was considered on 27.09.2007 and after making submission for sometime, the learned counsel for the petitioner did not press the bail application, on account of the fact that the investigation is still pending.

3. Learned counsel for the petitioner has made submissions extensively with regard to the grounds of rejection which had been given by the learned court below while deciding the bail application of the petitioner on 30.09.2007. It may be mentioned that it was against the said order passed by the court below, that the earlier bail application (6380/07) was filed by the petitioner. The contentions raised by the petitioner is that grounds on which his bail application was dismissed by the learned court

below have now become redundant in view of the the evidence which has been collected by the investigating agency and filed with the challan. Learned counsel for the petitioner, further invited the attention of the court towards the statements of Smt. Santara, Om Prakash, Narveer and Smt. Omwati, so as to submit that they are highly interested, anemical, highly unnatural and improbable witnesses. Learned counsel for the petitioner has relied upon the case of Jayendra Sarsawati Swamigal reported in 2005 (2) SCC 13 and the case of State V/s Navjot Sandhu reported in 2005 (11) SCC 600. In the last, learned counsel for the petitioner has submitted that the petitioner is in custody for about four months and as three other accused persons are yet to be taken in custody, the trial in this case is likely to take time.

4. On the other hand, learned Public Prosecutor and learned counsel for the complainant have seriously opposed the bail application. Learned counsel for the complainant has submitted that so far as the merits of the case as well as the grounds of rejection of the application, passed by the learned court below on 03.09.2007 is concerned, the same has already been taken into account by this Court at the time of first bail application. He has submitted that in this second bail application there is no change of circumstance or any new fact for which the application of the petitioner requires consideration, once again.

5. I have given my thoughtful consideration to the rival submissions made by the parties. In this case, the investigating

agency has filed a charge sheet on 03.11.2007 after coming to the conclusion that the alleged offences are prime facie made out against Ramesh, Hoshiyar Singh, Narendra, Sunil Pandit, Naresh Yadav and Surendra @ Chiku. It has also been noted in the charge sheet that despite of all efforts the accused Sunil Pandit, Naresh Yadav and Surendra @ Chiku could not be arrested so far.

6. I have also gone through the evidence filed along with the charge sheet. I have perused the statements of the prosecution witnesses, including that of Om Prakash, Smt. Santara, Smt. Omwati and Narveer Singh. So far as the submissions made by the learned counsel for the petitioner, in respect of evidence of witnesses recorded by the prosecution is concerned, it would be suffice to say that while considering this bail application it would not be proper to go into the nicety of the same. The grounds of rejection as mentioned by the learned court below while passing the order of 03.09.2007, in my considered opinion, now we have to consider the evidence against the petitioner which has come along with the charge sheet and it is in that light that this bail application needs to be decided.

7. So far as the submissions made by the learned counsel for the petitioner with regard to the offence alleged against the petitioner, it may be stated that in the matter of grant of bail the allegations are decisive one and not the section. Presently, the prosecution case is that it was the petitioner, who had hatched a conspiracy and hired killers for committing the offence. In cases of

such nature, the Hon'ble Supreme Court in the case of Deepak Singhvi V/s State of Rajasthan Criminal Appeal No.1002/07 decided on 03.08.2007 had adopted a strict view. As regards the case law cited by the learned counsel for the petitioner, I am of the view that in bail matters, the orders passed by different courts can not be taken to be as binding precedent because each matter depends on its own merits and facts and circumstances of that particular case. In this view, I am supported by the judgments of this Court in the case of Mohan Lal V/s State of Rajasthan, reported in 2005 (2) Cr.L.R. (Raj.) 1320.

8. In view of the above, I do not consider it to be just and proper to enlarge the petitioner on bail. However, looking to the facts and circumstances of the case and in the interest of justice, I deem it proper to direct the learned court below to examine Om Prakash, Smt. Santara, Smt. Omwati and Narveer Singh as first witnesses, as and when the trial commences.

9. With the aforesaid directions, the application stands disposed of.

(RAGHUVENDRA S. RATHORE),J.

RV/-Jr.P.A.
Item no.6